

CLERK'S OFFICE U.S. DIST. COURT  
AT ROANOKE, VA  
FILED

SEP 17 2019

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
(CHARLOTTESVILLE DIVISION)**

JULIA C. RUDLEY, CLERK  
BY: *ASagle*  
DEPUTY CLERK

ROTHY'S, INC.,

Plaintiff,

v.

JKM TECHNOLOGIES, LLC d/b/a/ OESH SHOES

&

DR. CASEY KERRIGAN d/b/a OESH SHOES,

Defendants.

Civil Action No. 3:18CV00067 (MFU)

**CONSENT DECREE**

Pursuant to a Confidential Settlement Agreement and Release between the parties dated September 13, 2019 (the "Settlement Agreement"), the parties have filed a joint motion for the entry of a Consent Decree. Finding that it is in the interests of justice to do so, the Court GRANTS the joint motion, and further ORDERS as follows:

1. Plaintiff Rothy's, Inc. ("Rothy's") asserts that certain shoes marketed and sold under the name "The Dream Flat" by Defendants JKM Technologies, LLC d/b/a/ OESH Shoes and Dr. Casey Kerrigan d/b/a OESH Shoes (collectively "Defendants") as defined and depicted in Rothy's Amended Complaint in this action (the "Accused Design"): (1) infringe United States Design Patent Nos. D768,366, D804,156, D805,276, D831,325, D833,729, and D836,314 (the "Rothy's Design Patents"); and (2) infringe the signature round toe with a distinctive pointed vamp, seamless 3D knitted upper, slim profile and sleek outsole of The Flat product constituting the trade dress of Rothy's The Flat product (the "Rothy's Trade Dress") under § 43(a) of the Lanham Act; and (3) have committed (and continue to commit) unfair competition and false designation of origin in violation of the Lanham Act.

2. Defendants denied all claims and liability and asserted counterclaims against Rothy's in this action challenging the validity and enforceability of the Rothy's Design Patents and the Rothy's Trade Dress and Defendants' alleged infringement thereof.

3. Without admitting any fault or liability, Defendants have agreed, as part of the Settlement Agreement, to the entry of a Consent Decree whereby Defendants: (a) acknowledge the validity of the Rothy's Design Patents and the Rothy's Trade Dress for purposes of this action; (b) are enjoined from manufacturing, marketing and selling the Accused Design after December 31, 2019, for the remaining term of the Rothy's Design Patents and the Rothy's Trade

Dress; and (c) introduce and announce the Redesigned Dream Flat, which Rothy's agrees does not infringe the Rothy's Design Patents or the Rothy's Trade Dress or violate any other alleged rights Rothy's may have, by October 15, 2019, pursuant to the terms and conditions of the Settlement Agreement.

4. Accordingly, the Court ORDERS that Defendants: (a) are enjoined from manufacturing, marketing and selling the Accused Design after December 31, 2019, for the remaining term of the Rothy's Design Patents and the Rothy's Trade Dress; and (b) are required to introduce and announce the Redesigned Dream Flat, which Rothy's agrees does not infringe the Rothy's Design Patents or the Rothy's Trade Dress or violate any other alleged rights Rothy's may have, by October 15, 2019.

5. All claims against Defendants are dismissed with prejudice. Notwithstanding the dismissal of this action, the parties further agree that this Court shall retain exclusive personal and subject matter jurisdiction to enforce the terms of this Consent Decree and the terms of the Settlement Agreement entered into by the parties in connection herewith.

6. Each party shall bear its attorney fees and costs incurred in connection with this matter.

It is so ORDERED.

Date: September 17, 2019

*/s/ Michael F. Urban*

United States District Judge

**ROTHY'S, INC.**

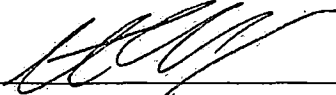
By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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**JKM TECHNOLOGIES, LLC d/b/a OESH  
SHOES**

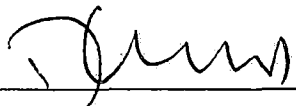
By:  \_\_\_\_\_

Printed Name: ROBERT A. Kusyk

Title: CEO

Date: 09.12.19

**DR. CASEY KERRIGAN**

By:  \_\_\_\_\_

Printed Name: D. Casey Kerrigan, MD

Title: Chairman

Date: 9/12/2019

**ROTHY'S, INC.**

*Dayna Quanbeck*

By: \_\_\_\_\_

Printed Name: Dayna Quanbeck

Title: Chief Financial Officer

Date: September 12, 2019

**JKM TECHNOLOGIES, LLC d/b/a OESH  
SHOES**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**DR. CASEY KERRIGAN**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_